

Section 10 of the Use Tax Act, 35 ILCS 105/10 (1996 State Bar Edition), provides that a purchaser of a motor vehicle from an out-of-State retailer shall file a return (Form RUT-25, Motor Vehicle Use Tax Return) with the Department and remit the proper amount of tax due on the selling price of the motor vehicle within 30 days after such motor vehicle is brought into this State for use. Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310. (This is a GIL).

October 7, 1999

Dear Xxxxx:

This letter is in response to your letter dated July 30, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please allow this letter to serve to advise you that our office represents COMPANY which is a National Banking association with principal offices located in CITY, Illinois. Pursuant to my meetings with various representatives of the Illinois Department of Revenue, it has been suggested that I request a Letter Ruling with regard to a situation involving COMPANY.

On or about July 13, 1998, COMPANY entered into a loan agreement with an entity known as BUSINESS. The principal balance of the loan was \$970,000.00. It was to be secured by certain collateral including an Assignment of Motor Vehicle Lease Agreement. The loan was also to have been collateralized by a Commercial Guaranty executed by PERSON and CORPORATION. Despite the Bank's attempt to properly document this loan, the Borrower subsequently advised the Bank that it wished to substitute different collateral for the loan. Nevertheless, the \$970,000.00 had been disbursed to the Borrower.

Thereafter, the Bank had the Borrower execute new loan documents on or about February 3, 1999 for a principal balance of \$870,000.00. They include the enclosed Promissory Note which has attached as an Exhibit a schedule of vehicles that were to be pledged as collateral. The Bank also received an Assignment of Motor Vehicle Lease Agreement which was signed by the Borrower and purportedly by the Lessee. I am enclosing a copy of the Assignment for your reference. The Borrower delivered to the Bank various Certificates of Origin along with Applications for Vehicle Title and Registration showing BUSINESS as owner, CORPORATION as seller and COMPANY as lienholder. The Bank

requested that the Secretary of State issue titles to the vehicles showing the Bank as lien holder.

The Secretary of State's office returned the documentation to the Bank due to the fact that the requisite documentation with the Illinois Department of Revenue had not been filed, specifically, the ST556 form and requisite taxes. Shortly thereafter PERSON was indicted by the Federal government and ceased to operate his business. The entities, BUSINESS and CORPORATION, are now being operated by FIRM as Assignee.

The Assignee is willing to work with the Bank provided that it can, in turn, provide the requisite documentation. Specifically, they are requesting that we produce Certificates of Title for the subject vehicles. As it turns out, neither the entities nor PERSON had entered into a Illinois Motor Vehicle Lease Agreement with the Lessee. The vehicles instead were leased to various individuals and companies and the leases themselves appear to have been pledged to BANK. COMPANY does have in its possession various original Certificates of Origin. Based upon the information that we have been provided, it does not appear that anyone has made application for the issuance of Certificates of Title for these vehicles.

What we are seeking a Letter Ruling for is whether COMPANY would be in a position to submit the requisite documentation along with the ST-556 form to the Illinois Department of Revenue and then be in a position, with the consent of the Assignee, to apply to the Secretary of State for the issuance of Certificates of Title to the motor vehicles. The end result would be upon the completion or termination of the lease, COMPANY would be entitled to those vehicles and could proceed accordingly. I had also discussed the issue of payment of taxes and penalty with the representatives of the Illinois Department of Revenue. I would also ask as to whether the Illinois Department of Revenue would, under these circumstances, consider waiving either the tax and/or penalty. If not, COMPANY, dependent upon the cost, would consider proceeding accordingly.

There is also an additional issue due to the fact that certain of these vehicles were purchased from STATE automobile dealers. We also need to know the Illinois Department of Revenue's position with regard to this issue and the issuance of the Certificates of Title to those vehicles.

In the event that you have any questions, or require any additional documentation, please do not hesitate to contact the undersigned at your convenience.

The Illinois Department of Revenue is unable to answer your questions regarding whether your client is the appropriate legal entity to file title and registration forms with the Secretary of State.

In regards to the tax owed on the purchase and use of the vehicles in Illinois, the Department will accept tax payment from entities other than the legal owner of the vehicle. For example, when a lessee brings a leased vehicle into the State of Illinois, the lessor generally incurs a tax liability when the vehicle is titled and registered in Illinois. The Department will accept payment of the tax from the lessee who in most scenarios is also registering the vehicle. The payment of the tax is not an indication that an entity has ownership rights in a vehicle. Please note that before a vehicle can be titled in Illinois, the Use Tax must be paid.

For vehicles purchased from Illinois Dealers, Form ST-556 is required to be filed and the amount owed is required to be paid with the Department of Revenue within 20 days of the purchase of the vehicles. 35 ILCS 120/3. If the form is not filed within this timeframe, penalties and interest are due.

For vehicles purchased from out-of-State retailers, Section 10 of the Use Tax Act, 35 ILCS 105/10 (1996 State Bar Edition), provides that a purchaser of a motor vehicle from an out-of-State retailer shall file a return (Form RUT-25, Motor Vehicle Use Tax Return) with the Department and remit the proper amount of tax due on the selling price of the motor vehicle within 30 days after such motor vehicle is brought into this State for use. Illinois will give a credit for taxes properly due and paid in another state. See 86 Ill. Adm. Code 150.310, enclosed. Depreciation is also allowed for out-of-State use. See 86 Ill. Adm. Code 150.105, enclosed. In addition, the Use Tax does not apply to the use, in this State, of tangible personal property which is acquired outside this State by a nonresident individual who then brings the property to this State for use here, and who shall have used the property outside this State for at least 3 months before bringing the property to this State. See the enclosed copy of 86 Ill. Adm. Code 150.315. This exemption is not applicable if the 3-month requirement is not met, or if the purchase is not made by a nonresident individual.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.